I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 415/2003
of 27 February 2003
on the issue of visas at the border, including the issue of such visas to seamen in transit

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62, point (2)(b)(ii), thereof,

Having regard to the initiative of the Kingdom of Spain [1],

Having regard to the opinion of the European Parliament [2],

Whereas:

(1) The rules for issuing visas at the border to seamen in transit need to be clarified and updated, in particular to allow group transit visas to be issued at the border to seamen who are of the same nationality and are travelling in a group, as long as the period of transit is limited.

(2) It is therefore necessary to replace the rules contained in the Schengen Executive Committee Decision of 19 December 1996 on issuing visas to seamen in transit (SCH/Com-ex (96) 27) [3] by the rules set out in this Regulation. In the interests of clarity, these rules should be amalgamated with the general rules contained in Schengen Executive Committee Decision of 26 April 1994 on the issue of uniform visas at the border (SCH/Com-ex (94) 2) [4], which also corresponds to Annex 14 of the Common Manual [5]. The said Decisions and Annex should therefore be repealed. The Common Manual and the Common Consular Instructions on visas for the diplomatic missions and consular posts [6] should also be amended to take into account this Regulation.

(3) When deciding on the format of the separate sheet mentioned in Annex I to which the group transit visa should be affixed, Member States should take into account the uniform format, as set out in Council Regulation (EC) No 333/2002 of 18 February 2002 on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents not recognised by the Member State drawing up the form [7].

(4) The measures necessary for the implementation of this instrument should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [8].

(5) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.

(6) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* [9], which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement [10].

(7) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* [11]; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

[1] OJ C 139, 12.6.2002, p. 6.
[2] Opinion of 11 February 2003 (not yet published in the Official Journal).
[3] OJ L 239, 22.9.2000, p. 182.
[4] OJ L 239, 22.9.2000, p. 163.
[5] OJ C 313, 16.12.2002, p. 97.
[6] OJ C 313, 16.12.2002, p. 1.
[7] OJ L 53, 23.2.2002, p. 4.
[8] OJ L 184, 17.7.1999, p. 23.
[9] OJ L 176, 10.7.1999, p. 36.
[10] OJ L 176, 10.7.1999, p. 31.
[11] OJ L 131, 1.6.2000, p. 43.

(8) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* [1]; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(9) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the Act of Accession,

HAS ADOPTED THIS REGULATION:

Article 1

1. By way of derogation from the general rule that visas shall be issued by diplomatic and consular authorities, in accordance with the provisions of Article 12(1) of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June 1990 [2], hereinafter referred to as the 'Schengen Convention', a third-country national who is required to be in possession of a visa when crossing the external borders of the Member States, may exceptionally be issued with a visa at the border where the following conditions are satisfied:

(a) he or she shall fulfil the conditions laid down by the provisions of Article 5(1)(a), (c), (d) and (e) of the Schengen Convention;

(b) he or she has not been in a position to apply for a visa in advance;

(c) he or she shall submit, if required, supporting documents substantiating unforeseeable and imperative reasons for entry, and

(d) return to his or her country of origin or transit to a third State shall be assured.

2. A visa issued at the border when the conditions described in paragraph 1 are satisfied may, as appropriate, be either a transit visa (type B) or a travel visa (type C) within the meaning of the provisions of Article 11(1) of the Schengen Convention, which

(a) is valid for all Member States applying the provisions of Title II, Chapter 3, of the Schengen Convention, or

(b) has limited territorial validity within the meaning of the provisions of Article 10(3) of the Schengen Convention.

In both cases, the visa issued shall not be valid for more than one entry. The validity of such travel visas shall not exceed 15 days. The validity of such transit visas shall not exceed five days.

3. A third-country national who applies for a transit visa at the border shall be in possession of the visas required to continue his or her journey to States of transit other than Member States applying the provisions of Title II, Chapter 3, of the Schengen Convention, and for the State of destination. The transit visa issued shall allow for direct transit through the territory of the Member State or Member States concerned.

4. A third-country national falling within a category of persons for which it is obligatory to consult one or more of the central authorities of other Member States shall not, in principle, be issued with a visa at the border.

Nevertheless, a visa may be issued at the border for such persons in exceptional cases, in accordance with the provisions of Article 5(2) of the Schengen Convention.

Article 2

1. A seaman who is required to be in possession of a visa when crossing the external borders of the Member States may be issued with a transit visa at the border where:

(a) he fulfils the conditions in Article 1(1) and (3), and

(b) he is crossing the border in question in order to embark on, re-embark on or disembark from a ship on which he will work or has worked as a seaman.

The transit visa shall be issued in compliance with the provisions of Article 1(2) and, in addition, shall include a mention that the holder is a seaman.

2. Seamen who are of the same nationality and travelling in a group of between five and 50 individuals may be issued with a group transit visa at the border where the requirements of paragraph 1 above are met in respect of each of the seamen in the group.

3. Before issuing a visa at the border to a seaman or seamen in transit, the competent national authorities shall comply with the operational instructions set out in Annex I.

4. When carrying out these operational instructions, the competent national authorities of the Member States shall exchange the necessary information concerning the seaman or seamen in question by means of a duly completed form for seamen in transit as set out in Annex II.

5. Annexes I and II shall be amended in accordance with the regulatory procedure referred to in Article 3(2).

[1] OJ L 64, 7.3.2002, p. 20.
[2] OJ L 239, 22.9.2000, p. 19.

6. This Article shall apply without prejudice to the provisions of Article 1(4).

Article 3

1. The Commission shall be assisted by the Committee set up by Article 6 of Regulation (EC) No 1683/95 [1].

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3. The Committee shall adopt its rules of procedure.

Article 4

This Regulation shall not affect the competence of Member States with regard to the recognition of States and territorial units and passports, travel and identity documents issued by their authorities.

Article 5

1. The following shall be repealed:

(a) Schengen Executive Committee Decision (SCH/Com-ex (94) 2) of 26 April 1994, and

(b) Schengen Executive Committee Decision (SCH/Com-ex (96) 27) of 19 December 1996.

2. Point 5 and point 5.1 of Part II of the Common Manual shall be replaced by the following:

'The rules on issuing visas at the border, including the issue of such visas to seamen in transit, are contained in Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (*) (see Annex 14).

(*) OJ L 64, 7.3.2003, p. 1.'

3. The first sentence of Annex 14 shall be replaced by the following:

'The rules on the issue of visas at the border, including the issue of such visas to seamen in transit, are contained in, or adopted on the basis of, Council Regulation (EC) No 415/2003.'

The rest of Annex 14 shall be repealed.

4. The following sentence shall be added at the end of point 2.1.4 of Part I of the Common Consular Instructions:

'By way of derogation from the foregoing, group transit visas may be issued to seamen in accordance with the provisions of Council Regulation (EC) No 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (*).

(*) OJ L 64, 7.3.2003, p. 1.'

Article 6

This Regulation shall enter into force on the first day of the second month following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 27 February 2003.

For the Council

The President

M. CHRISOCHOÏDIS

[1] OJ L 164, 14.7.1995, p. 1. Regulation as amended by Regulation (EC) No 334/2002 (OJ L 53, 23.2.2002, p. 7).

ANNEX I

OPERATIONAL INSTRUCTIONS FOR ISSUING VISAS AT THE BORDER TO SEAMEN IN TRANSIT WHO ARE SUBJECT TO VISA REQUIREMENTS

The objective of these operational instructions is to provide rules for the exchange of information between the competent authorities of the Member States applying the Schengen *acquis* with respect to seamen in transit subject to visa requirements. Insofar as a visa is issued at the border on the basis of the information that has been exchanged, the responsibility lies with the Member State issuing the visa.

For the purposes of these operational instructions:

'Schengen port': means a port constituting an external border of a Member State applying in full the Schengen *acquis*;

'Schengen airport': means an airport constituting an external border of a Member State applying in full the Schengen *acquis*, and

'Schengen territory': means the territory of the Member States in which the Schengen *acquis* is applied in full.

I. **Signing on a vessel berthed or expected at a Schengen port**

(a) entry into Schengen territory via an airport situated in another Member State applying in full the Schengen *acquis*

— the shipping company or its agent shall inform the competent authorities at the Schengen port where the ship is berthed or expected that seamen subject to visa requirements are due to enter via a Schengen airport. The shipping company or its agent shall sign a guarantee in respect of those seamen,

— the said competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and examine whether the other conditions for entry into the Schengen territory have been satisfied. Within the framework of that examination the travel route within the Schengen territory shall also be verified e.g. by reference to the airline tickets,

— the competent authorities at the Schengen port shall inform the competent authorities at the Schengen airport of entry, by means of a duly completed form for seamen in transit who are subject to visa requirements (as set out in Annex II), sent by fax, electronic mail or other means, of the results of the verification and indicate whether a visa can in principle be issued at the border,

— where the verification of the available data is positive and the outcome clearly concurs with the seaman's declaration or documents, the competent authorities at the Schengen airport of entry or exit can issue a transit visa at the border with a maximum validity of five days. Furthermore, in such cases the seaman's travel document referred to above shall be stamped with a Schengen entry or exit stamp and given to the seaman concerned;

(b) entry into the Schengen territory via a land or sea border situated in another Member State applying in full the Schengen *acquis*

— the procedure is the same as that for entry via a Schengen airport except that the competent authorities at the border post via which the seaman concerned enters the Schengen territory shall be informed.

II. **Leaving service from a vessel that has entered a Schengen port**

(a) exit from the Schengen territory via an airport situated in another Member State applying in full the Schengen *acquis*

— the shipping company or its agent shall inform the competent authorities at the said Schengen port of the entry of seamen subject to visa requirements who are due to leave their service and exit from the Schengen territory via a Schengen airport. The shipping company or its agent shall sign a guarantee in respect of those seamen,

— the competent authorities shall verify as soon as possible whether the information provided by the shipping company or its agent is correct and examine whether the other conditions for entry into the Schengen territory have been satisfied. Within the framework of that examination the travel route within the Schengen territory shall also be verified e.g. by reference to the airline tickets,

— where the verification of the available data is positive, the competent authorities may issue a transit visa with a maximum validity of five days;

(b) exit from the Schengen territory via a land or sea border situated in another Member State applying in full the Schengen *acquis*

— the procedure is the same as that for exit via a Schengen airport.